

OPINION
49-124

September 16, 1949 (OPINION)

LIQUOR

RE: Limitation of Licenses

I have your letter of September 9 and contents of same have been noted.

The question that you submit is whether or not the Ward County Commissioners may refuse to issue a beer license to an applicant who is properly qualified under the law to engage in the business of selling beer.

You also enclose a copy of an opinion written by Mr. Alvin C. Strutz in which he takes the position that the county commissioners have no discretion and they must issue a license if the person making the application has the necessary qualifications. He cites the case of Thielen vs. Kostelecky, 69 N.D. 410.

We rather feel that Thielen vs. Kostelecky is against the views expressed by Mr. Strutz. In fact, Mr. Strutz's opinion is rather contrary to opinions rendered while he was attorney general.

It is well settled and the courts have held that there is no inherent right in a citizen to sell intoxicating liquors. It is not a privilege of a citizen of the state or a citizen of the United States. As it is a business attended with danger to the community, it may be entirely prohibited, or be permitted under such conditions which will limit to the utmost its evils. The manner and extent of regulation rests in the discretion of the governing authority. That authority may vest in such officers as it may deem proper, the power of passing upon applications for permission to carry it on and to issue licenses for that purpose. Crowley v. Christensen, 11 Sup. Ct. Rep. 13.

"In the case of State vs. Holt Co. Court, 39 No. 521, there was an application for a writ of mandamus to compel the County Court to issue a license. The statute provided that if the court shall be of the opinion that the applicant is a person of good character, the court may grant a license for six months. This fact was admitted. The application was made in conformity with the requirements in all respects of the statute governing licenses, and the County Court refused to grant the license. The mandamus was refused; the court holding that, although a party applying for a dram-shop license may show himself to possess all the qualifications requisite for the issuing of a license under the statute, the County Court may still, in the exercise of its discretion, refuse to grant such license.

In the case of Muller vs. Commissioners, 89 N.C. 172, there was an application for mandamus. The statute involved in the case provided that the applicant might obtain a license from the County Commissioners to retail liquor upon proving a good moral character.

The court held that such commissioners were not bound to license an applicant though he be qualified by proof of good moral character; that they had a limited legal discretion, and, in passing upon an application, they have a right to take into consideration the question whether the demands of the public require an increase of such accommodations, and whether the place proposed to establish a barroom would be a suitable one.

There has been held that legislative power of a city council to license, regulate and tax carries with it a wide discretion as to persons and places to be licensed and the number of licenses to be granted, which discretion may be exercised in each case when an application is made if the matter has not been regulated by general ordinance or resolution. 30 Amer. Jur. Sec. 121, page 320, *Sherlock v. Stuart* (Mich.) 55 N.W. 845, 21 L.R.A. 580.

Again it has been held that no one has an inherent right to a license to sell intoxicating liquor and when a statute makes the granting of a license to sell liquors dependent on the approval of the applicant by some officer or board no one can demand such license without first obtaining the required approval. 30 Amer. Jur. Sec. 113, page 317.

It is the opinion of this office that even in the absence of an ordinance or resolution limiting the number of licenses which may be issued for the operation of beer parlors or liquor stores, the governing body of a city, village or county is vested with discretion and authority as to the issuance of licenses.

WALLACE E. WARNER

Attorney General